IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 12815 of 2007(A)

PETITIONER:

SULAIGHA, BRANCH MANAGER,
ALWAYE URBAN CO-OPERATIVE BANK,
ALWAYE, ERNAKULAM.

BY ADV. SRI.P.P.JACOB
SRI.N.T.SATHYAVAN

RESPONDENTS:
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1. **ALWAYE URBAN CO-OPERATIVE BANK,**
   ALWAYE, ERNAKULAM, REP. BY ITS SECRETARY.

2. **THE REGISTRAR OF CO-OPERATIVE**
   SOCIETIES, THIRUVANANTHAPURAM.

3. **K.V.RAJU, BRANCH MANAGER,**
   ALWAYE URBAN CO-OPERATIVE BANK,
   ALWAYE, ERNAKULAM.

BY ADV. SRI.V.G.ARUN for R1
SRI.T.R.HARIKUMAR
SRI.JAIBY PAUL
BY GOVERNMENT PLEADER SMT. M.K.PUSHPALATHA for R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.12815/2007 A

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER ISSUED BY SECOND RESPONDENT DTD. 28/03/2005.**

EXT.P2: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DTD. 31/12/2006.**

EXT.P3: **COPY OF THE SENIORITY LIST PUBLISHED BY FIRST RESPONDENT.**

EXT.P4: **COPY OF THE COMMUNICATION ISSUED BY FIRST RESPONDENT TO THE PETITIONER.**

/TRUE COPY/

P.A.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.12815 of 2007-A

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Dated this the 22nd day of November, 2007.

JUDGMENT

1.A vacancy in Category No.3, Inspector of Branches/Chief Accountant/Branch Manager/Internal Auditor/Development Officer, arose in the service of the first respondent, an urban co-operative bank. On 1-12-2004, the third respondent, the only senior-most graduate available in the feeder category, was promoted to that post. Before that, on 16-11-2004, the Board of Directors of the first respondent bank had resolved to relax the educational qualifications of the petitioner for being promoted to that category. Such relaxation was necessary because, she possessed only SSLC. By Ext.P1, the request of the bank for such relaxation was granted by the Registrar of Co-operative Societies, in exercise of authority under Rule 185(8) of the Kerala Co-

operative Societies Rules, however ordering that the said order of relaxation will take effect only from the date of Ext.P1 order, namely, 28-3-2005.

2.This writ petition is filed on 11-4-2007 on the plea that the provision in Ext.P1 that the relaxation will take effect only from the date of Ext.P1 order is unsustainable, in view of the judgment of this Court in Dasan v. Registrar of Co-operative Societies [2007 (1) KLT 581]. The petitioner accordingly seeks a declaration that the benefit of Ext.P1 approval relates back to 16-11-2004, the date of the decision of the Board of Directors to grant exemption to the petitioner. On the strength of such a contention, the petitioner seeks to upset the seniority fixed between her and the third respondent as approved by the Board of Directors as per resolution dated 28-2-2007 (Ext.P3).

3.In Dasan's case (supra), this Court, following

the judgment in Kuttipuram Service Co-operative Bank v. State of Kerala [2004 (2) KLT 73], laid down that the order of approval of relaxation gives effect to the relaxation made by the Board of Directors, from the date on which the Board of the bank resolved to grant relaxation and therefore, promotions are also to be regulated accordingly. In Kuttipuram Service Co-operative Bank (supra), this Court laid down that the Government cannot issue any direction in the form of circulars or otherwise to govern the exercise of statutory power by RCS to grant approval in terms of Rule 185(8) in relation to exemption. Dasan's case was decided in relation to facts governed by Rule 185(8) as it stood before 3-9-2005 and is no specific authority to hold that the seniority between persons promoted before the issuance of approval orders under Rule 185 would have to be reviewed in terms of approval orders issued by the RCS regarding exemption.

4.On to the question whether any injustice has been

done to the petitioner, it can be noticed from Ext.P3 that the third respondent is the only graduate in office, in the first three categories of employees. Apart from that, he is the only one in all the three categories, who possesses HDC, while all the others possess only JDC. The date of retirement of the third respondent is nearly two years ahead of that of the petitioner. The personnel presently holding Categories 1 and 2 and the two persons who are seniors to the third respondent and the petitioner, would also retire before the third respondent. This means that while the third respondent may, subject to just exceptions, go up the ladder and retire earlier, there is no reason to assume that the placement of the third respondent above the petitioner would deprive the petitioner of any chances of promotion, either to Category No.2 or Category No.1, before retirement. If that be so, no injustice can be found in giving the third respondent, a more qualified person, the opportunity to move up the ladder, while the

exemption granted to the petitioner remained for approval with the RCS. All that the petitioner could aspire then would be placement in scales of pay and other service benefits with reference to the date of exemption which would be the date on which the Board resolved to extend exemption.

5. For the foregoing reasons, this writ petition is allowed to the following limited extent:

a. The date of effect of the exemption from qualification approved as per Ext.P1 will be treated as 16-11-2004 for all purposes other than promotion.

b. The petitioner will be entitled to all service benefits, except promotion, by treating her as having been exempted from acquiring the qualification with effect from 16-11-2004.

c. The seniority list Ext.P3, inter se

the third respondent and the petitioner, will stand as it is.

No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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